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July 18, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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Kathleen Q. Abernathy
Vice President
Federal Regulatory

AirTouch Communications
1818 N Street N.W.
Suite 800
Washington, DC 20036

Telephone: 202 293-4960
Facsimile: 202 293-4970

RE: Interconnection Between Local Exchange Carriers and Commercial
Mobile Radio Service Providers (CC Docket No. 95-185) ✓
Commission Initiates Proceeding to Implement Interconnection Provisions
of Telecommunications Act of 1996 (CC Docket No. 96-98)

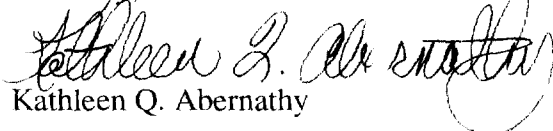
Dear Mr. Caton:

The attached material was distributed to Suzanne Toller, Legal Advisor to Commissioner Chong. Please associate this material with the above-referenced proceeding.

Two copies of this notice are being submitted to the Secretary in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,


Kathleen Q. Abernathy

cc: Rosalind Allen Dan Gonzalez
Rudy Baca Daniel Grosh
Lauren (Pete) Belvin Regina Keeney
Karen Brinkmann Richard Metzger
James Casserly John Nakahata
Jackie Chorney David Nall
James Coltharp Gregory Rosston
Barbara Esbin Suzanne Toller
Michele Farquhar

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AirTouch Communications
Scope of FCC Jurisdiction
CC Docket Nos. 95-185 and 96-98

A pivotal issue in this and related proceedings is whether jurisdiction over LEC-CMRS interconnection is governed by Section 332(c)(1)(B) or Sections 251/252. The subject was first raised in GN Docket No. 93-252, the proceeding in which the Commission took initial steps to establish a broad framework for the regulation of CMRS. One of the points addressed in the Notice of Proposed Rulemaking issued in that comprehensive proceeding, 8 FCC Rcd 7988 (1993), was the scope of Section 332(c)(1)(B). On that point, the Commission made the following observation:

In its new form, Section 332(c)(1)(B) requires the Commission to order a common carrier to interconnect with a commercial mobile service provider on reasonable request. In addition, new Section 332(c)(1)(B) states that: 'This paragraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to . . . [the Communications] Act.' Thus, the statute neither limits nor expands the Commission's authority to order interconnection pursuant to Section 201 of the Act.' (Id. at 8001) (Ellipses in original.)

This reference to Section 332(c)(1)(B) raises a number of questions. First, the second section of the provision, read in its entirety, provides as follows with respect to a request for interconnection by a CMRS provider:

Except to the extent that the Commission is required to respond to such a request, this paragraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act. (Emphasis added.)

The second half of this sentence, viewed in isolation, is susceptible to only one interpretation — that is, the Commission's Section 201 authority was not affected by the Budget Act. But when the underscored language is added to the analysis, a very different interpretation necessarily

emerges. Specifically, Section 332(c)(1)(B) did not alter the Commission's authority under Section 201 except in situations involving requests for interconnection initiated by any CMRS providers. This exception, particularly when viewed in conjunction with Section 2(b), as modified by the Budget Act, must be interpreted as expanding the Commission's Section 201 authority to include both interstate and intrastate LEC-CMRS interconnection. In short, Section 332(c)(1)(B), read as a whole, clearly has a very different meaning than the truncated version of the provision included in the Notice.

As a related point, Section 332(c)(1)(B) requires the Commission to respond to "any" CMRS providers' requests for interconnection by ordering such interconnection "pursuant to the provisions of section 201 of this Act." This further reinforces the conclusion that the Commission's Section 201 authority was expanded to include both interstate and intrastate LEC-CMRS interconnection. The Commission's analysis of Section 332(c)(1)(B) in the Notice does not address this important factor.

It is noteworthy that the Commission did not seek comment on this interpretational issue, and the topic received only limited attention in the comments. It is not surprising, then, that in the Second Report and Order issued in GN Docket No. 93-252, the Commission simply repeated the position it had articulated earlier: "[Section 332(c)(1)(B)] does not limit or expand the Commission's authority to order interconnection pursuant to the Act." 9 FCC Rcd 1411, 1493 (1994).

It soon became apparent, however, that the Commission was not entirely convinced that its interpretation was the correct one. This became evident in January 1996 when the Commission released its Notice of Proposed Rulemaking in CC Docket No. 95-195, the

LEC-CMRS interconnection proceeding, FCC 95-505 (released January 11, 1996) . In that Notice the Commission proposed a number of alternative regulatory frameworks for LEC-CMRS interconnection, including one — the bill and keep proposal — which would essentially displace any state authority in this area “with respect to all traffic”, id. at ¶ 110, both interstate and intrastate. Such action would have been inconsistent with the Commission’s earlier determination in GN Docket No. 93-252 that the states were not preempted from regulating LEC-CMRS interconnection rates. The Commission nonetheless tentatively concluded that it has “sufficient authority to implement these options,” id. at ¶ 111, and it “request[ed] comment on the meaning and relevance of Section 332(c)(1)(B) to our jurisdictional analysis.” Id. at ¶ 113.

The Commission’s request for comment on this issue represents a *departure* from its earlier interpretation of Section 332(c)(1)(B). At a minimum, this demonstrates that the Commission’s earlier pronouncement regarding the scope of its authority under Section 332(c)(1)(B) was not settled. It would therefore be inaccurate to assert that the Commission would need to reverse itself in order to conclude that Section 332(c)(1)(B) did expand its 201 authority in the limited context of CMRS interconnection — the Commission has already shifted away from the interpretation of this provision that it had articulated in GN docket No. 93-252.